

of the Senate Intelligence Committee in 1976. Following the Church Committee's report on Executive abuses, the Senate established the Committee to "provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States."

Thirty years after the Senate Intelligence Committee was created, however, it is not living up to its charge. Members of the committee are not provided with sufficient information on intelligence programs and activities to legislate or oversee to intelligence community. Provisions in the stalled legislation—the Intelligence authorization bill—would fix this problem.

A good example of how the system fails to work is the so-called Terrorist Surveillance Program, which was publicly revealed last December but which had not previously been briefed to the committees.

According to the White House, this National Security Agency program was too sensitive to be briefed to the 15 Senators on the committee—the 15 Senators hand-selected by the majority and minority leaders for this assignment.

Instead, the President and Vice President decided to inform only 8 of the 535 Members of Congress: the party leadership in both houses and the leadership of the two intelligence committees.

The National Security Act does provide for limited briefings to these eight Members of Congress but only for especially sensitive covert actions. The NSA program is not a covert action.

The administration also points to statute saying that it must take "due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters. . ."

The 1980 Senate report accompanying this "due regard" provision explained

this provision more directly—and makes clear that it does not allow the administration to restrict information from the committee indefinitely as was done with the Terrorist Surveillance Program.

The report recognized "that in extremely rare circumstances a need to preserve essential secrecy may result in a decision not to impart certain sensitive aspects of operations or collection programs to the oversight committees in order to protect extremely sensitive intelligence sources and methods."

The "due regard" language that the administration cites was intended, at most, to limit briefings on the most sensitive aspects of operations, in extremely rare circumstances. It was also expected that withholding this sensitive information would be a temporary measure. This language was not intended to conceal the existence of entire programs from all committee members.

So in effect, the White House has broadly interpreted the National Security Act to void meeting its responsibility to inform Congress.

This Intelligence authorization bill's changes to the National Security Act close the loopholes but, in fact, are far more generous to the executive branch than many would like. The bill acknowledges that there are times when not all Members have to be "fully and currently" briefed on all intelligence matters. However, in those cases, it requires that all committee members receive a summary of the intelligence collection or covert action in question.

This arrangement would allow the intelligence agencies to protect the most sensitive details of sources and methods, but crucially, it would allow the full committee to assess the legality, costs and benefits, and advisability of an intelligence operation.

The authorization bill also changes a definition in the National Security Act to make clear that the requirement to

keep the committees "fully and currently informed" means that all Members will be kept informed. Congress has allowed the intelligence community to brief only the chairman and vice chairman on too many programs for too long.

I do not need to remind my colleagues that full committees, not a single Democrat and Republican, vote to authorize programs and funding. All Members must be informed if they are to perform their Constitutional duties.

The pending authorization bill would make one additional change to what it means for an intelligence activity to be authorized by Congress.

Stemming from the wiretapping abuses in the 1970s and because of the special challenges to conducting oversight of classified programs, the National Security Act prohibits the use of appropriated funds for any intelligence activities unless they are authorized by Congress. The pending bill would specify that an activity can only be "authorized" if the members of the authorizing committees have been fully briefed on it—or given a summary in the especially sensitive cases I described before.●

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#### RECESS UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 9:30 a.m. tomorrow.

Thereupon the Senate, at 9:25 p.m., recessed until Thursday, September 7, 2006, at 9:30 a.m.

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#### NOMINATIONS

Executive nomination received by the Senate September 6, 2006:

##### DEPARTMENT OF THE TREASURY

ROBERT K. STEEL, OF CONNECTICUT, TO BE AN UNDER SECRETARY OF THE DEPARTMENT OF THE TREASURY, VICE RANDAL QUARLES.